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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by the Federation of Associations for the Defence and Promotion of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 January 1999]

Implementation of the peace plan for Western Sahara: stage of referendum on self-determination and human rights situation

1. In 1975 just at the end of General Franco's dictatorship, Spain abandoned the last of its colonies: the territory of Western Sahara. That same year, Morocco invaded the territory. The vacuum created by Spain's withdrawal resulted in war between the Frente POLISARIO - which, representing the Saharawis, claims the right of the people of Western Sahara to self-determination according to international law in force - and their new colonizers. The Madrid Accords of 1975 turned Western Sahara over to Morocco and Mauritania - a country that would renounce its claims to the area - in a transfer that was clearly null and void as a matter of law. The war between the Frente POLISARIO and Morocco lasted until the ceasefire of 1991, when the United Nations agreed to create a peace-keeping mission, the United Nations Mission for the Referendum in Western Sahara (MINURSO), to hold the referendum Spain was supposed to hold in 1975.

2. The referendum for the self-determination of the people of Western Sahara, which was adopted by the United Nations as a peaceful solution to the Western Sahara decolonization conflict, was scheduled for 1992, but it was postponed until it was suspended in 1996. The Houston agreements, reached between the parties in September 1997 under the auspices of the Personal Envoy of the United Nations Secretary-General, Mr. James A. Baker, reactivated the process.

3. The Houston accords made it possible for the Frente POLISARIO and the Government of Morocco to reach agreement on the central issue of the procedures for constituting the electoral body, on the question of the confinement of the troops, the repatriation of the refugees, the release of political prisoners and the exchange of prisoners of war and also produced a code of conduct for the referendum, all of which, if implemented in good faith, could lead to a just and fair referendum. In the light of the advancements favoured by the Houston agreements the referendum was then scheduled for 7 December 1998.

4. However, the obstructionist attitude held by the occupant country, Morocco, has led once more to a new delay in the holding of the referendum and thus the United Nations Security Council in its resolution 1204 (1998) of 30 October 1998, taking into account the proposals contained in the Secretary-General's report S/1998/997, dated 26 October 1998, postponed the holding of the referendum until December 1999. The Secretary-General came up with a series of recommendations that were welcomed by the Security Council in the above-mentioned resolution, among them:

(a) To resume without delay identification of those applicants from tribal groupings H41, H61 and J51/52 (there is a controversy between the authorities of Western Sahara and Morocco on these tribes. It is a question of 65,000 persons of dubious credentials, people from tribes only marginally related to Western Sahara. The Government of Morocco is pushing for them to be allowed to vote) who wish to present themselves individually, and at the same time to begin the appeals process, as the best means of moving forward in the implementation of the Settlement Plan;

(b) In order to avoid the indefinite extension of the Identification Commission's programme of work, the Secretary-General proposed to publish by 1 December 1998 the provisional list of voters resulting from the work of the Identification Commission on tribes other than tribal groupings H41, H61 and J51/52, so as to begin on that date the appeals process concerning tribes which have already been identified. This appeals process could conclude in March 1999. However, given the obstacles brought about by Morocco, Mr. Kofi Annan has abandoned his intentions of publishing the provisional voters' list on 1 December;

(c) The number of the Commission's members will be gradually increased from 18 to 25;

(d) The holding of the referendum will also depend on the measures taken in anticipation of the return of refugees who have been declared eligible to vote, together with their immediate family members, and the conditions in which that repatriation takes place. To this end "the presence and establishment of UNHCR in the territory must be formalized in the very near future. That is a major requirement if we wish to create a real climate of confidence among the refugees";

(e) According to the new schedule, the transition period will begin in June-July 1999; the referendum should be held in December 1999. The full deployment by MINURSO should be effective on 1 January 1999;

(f) Accordingly, the Secretary-General asked the Security Council to extend the mandate of MINURSO to 30 April 1999. (In relation to this, the Security Council in its latest resolution on the subject (1215 (1998) of 17 December 1998) extended the mandate of MINURSO until 31 January 1999.)

5. The most recent United Nations documents on the question of Western Sahara, the report of the Secretary-General S/1998/1160 of 11 December 1998 and the above-mentioned Security Council resolution 1215 (1998) of 17 December 1998, have made it clear that the Frente POLISARIO has officially accepted all of the proposed measures (see S/1998/997) and that Morocco for its part has expressed its "concerns regarding key provisions" of the proposed package.

6. The dilatory manoeuvres of the Government of Morocco have resulted in the identification of 65,000 more persons of Moroccan origin, in full contradiction of the Security Council's decision that the electoral body for the referendum would be determined on the basis of an update of the 1974 Spanish census. This new attempt on the part of Morocco to legitimate its illegal occupation of the territory has provoked a new delay of one year in the holding of the referendum.

7. The Moroccan strategy aimed at preventing the Saharawi people from expressing its desire for freedom and self-determination and its legitimate aspirations to dignity and justice, makes use of a series of practices that violate human rights and that are perpetrated to a large extent by the occupant army: the use of napalm and phosphorus bombs, extrajudicial and summary executions, forced disappearances, torture, widespread repression,

unfair trials, a state of siege, an information blockade and also a policy of population transfer (settlers) in order to denaturalize the demographic composition of the territory.

8. In the light of all this, the signing organizations would like to express their concern at and rejection of the human rights violations, starting with that of the right to self-determination, to which the Saharawis are being subjected as individuals and as a people, and would also like to draw attention to the following facts:

(a) MINURSO has been able to comply with most of its assignment having already identified up to 147,000 persons (twice the number of persons in the Spanish census) who, pursuant to the Houston accords had to be summoned by the Identification Commission; however, thousands of Saharawi emigrants whose situation has not yet been regularized and who live mainly in Spain and France have been left aside in this identification process; these Saharawis have not had any access to the Identification Commission; if the current situation is maintained they will not be able to exercise their right to vote;

(b) Regarding freedom of movement and the possibility of gaining access to the occupied territory, the Government of Morocco restricts free access, preventing it from being visited by personalities and diplomats. On 26 May 1998, Morocco forbade the utilization of the MINURSO aircraft for the transportation of diplomats, officials of non-governmental organizations and journalists, which became the central point of a letter that the Special Representative of the Secretary-General, Mr. Charles F. Dunbar, sent to the Government of Morocco, asserting that the visit of the persons concerned was within the framework of the activities of the Mission and of the United Nations and would contribute to the transparency of the process. However, Morocco has not changed its position. The restrictions imposed by Morocco on the freedom of movement adversely affect the transparency of the process and put in danger the results of the referendum. It is quite disturbing that Morocco manages to impose such practices on the United Nations. Therefore we would like to express our disapproval of the lack of guarantees to the Saharawi population of freedom of expression and movement and exercise of its inalienable right to self-determination and independence, in accordance with the principles of the Charter of the United Nations and with General Assembly resolution 1514 (XV) of 14 December 1960, which contains the Declaration on the Granting of Independence to Colonial Countries and Peoples;

(c) With respect to the repatriation of Saharawi refugees, Morocco has refused to provide the civilian police of MINURSO with the relevant information to permit their return in safe conditions.

9. At the same time, since the beginning of the conflict in 1973 all parties involved have placed mines all over the territory. In this respect, the scant Moroccan cooperation with the mine-clearance units has also been verified. It even confiscated for several months in El Ayoun airport the communication equipment of the units of Sweden and Pakistan. As a consequence, according to a recent MINURSO report, the Mission was not able to accomplish its task by the end of October 1998, as had been anticipated.

10. We therefore we express our deep concern that the demining is only partial and that mines would only be removed from some gaps in the Moroccan defence walls and from zones in which the Saharawi refugees have sought shelter, thus entailing a permanent danger and a psychological pressure for the participants in the referendum. It should also be taken into account that the singular nature of the terrain, marked out by a series of dunes, does not guarantee that the cleared zones will be thoroughly safe.

11. The Moroccan security forces continue to commit serious violations of human rights in the occupied territories of Western Sahara, thus acting against international treaties signed by the Kingdom of Morocco, in spite of the presence of the United Nations in the territory since 1991. These violations result in violent repression of the whole of the civil Saharawi population, which is being subjected to a restrictive apparatus composed of more than 250,000 Moroccan agents. In spite of the presence of MINURSO, assassinations, arbitrary detentions, torture and penalties that violate the provisions of due process persist.

12. There is no news about the hundreds of disappeared persons and political prisoners. The efforts of the United Nations independent jurist for the release of the Saharawi prisoners, Mr. Emanuel Roucounas, have not yet had any positive results given the refusal of Morocco to recognize the hundreds of cases of disappeared.

13. Currently, the Moroccan absolutist monarchy is developing a clean image campaign mainly based on King Hassan's idea of putting an end to the human rights violations and promoting the opening up of his Government. The Human Rights Advisory Council, which has been created by the King to serve that image, announced the release of 28 political prisoners and the recognition of the death of 70 Moroccans who disappeared in the 1960s and 1970s. But the reality is that the dossier has just been opened and the issue of the hundreds of Saharawi prisoners and disappeared is still taboo. As an example, Abraham Serfaty, a Moroccan citizen who is in favour of the self-determination of the Saharawi people, has not been granted the right to return. Also, 85 Moroccan prisoners of war freed by the Frente POLISARIO have not been able to return to their land owing to the refusal of Morocco to recognize the existence of prisoners of war.

14. In view of these facts we wish to call attention to the following:

(a) The need for the hundreds of Saharawi disappeared and their families, including Mohamed Basiri whose case is under the responsibility of the Government of Spain, to achieve their right to truth, justice and redress and for the victims of torture and other cruel, inhuman or degrading treatment or punishment to be compensated also. Respect for the victims' rights requires the authors of these violations to be identified and brought to trial in order to determine their responsibility and impose upon them the sanctions provided for by law;

(b) The fact that the creation of a climate of trust and serenity for the development of a free referendum and respect for the international human rights instruments and international humanitarian law require the release of all the Saharawi prisoners and disappeared, the creation of an independent

commission to conduct a thorough investigation into the serious human rights violations carried out by the parties to the conflict and to prosecute the authors of these violations;

(c) We consider, given that the various restrictive bodies continue to function, that the guarantee of a free referendum also implies withdrawal of the services and bodies of the Moroccan State responsible for serious human rights violations in Western Sahara, particularly the Moroccan Army, the Territory Security Directorate (DST), the Judicial Police (PJ), the Royal Gendarmerie and the Mobile Intervention Companies (CMI). These bodies are thought to have been responsible for more than 90 per cent of the detentions carried out in Western Sahara;

(d) We also consider reprehensible the passive attitude of the international community, and especially of Spain given its historical responsibility towards the Saharawi people; we would like to underline that the only possible way to achieve peace and security in Western Sahara is the prompt holding of the referendum on self-determination. Spain should actively promote the holding of the referendum, even if this former colonial country has to take into account the active opposition of Morocco. Until now, MINURSO has not counted with any Spanish component, nor has the Government of Spain shown any resolute interest in sending qualified observers to the area;

(e) During his recent visit to the region, between 30 November and 2 December 1998, the United Nations Secretary-General confirmed that the Frente POLISARIO clearly accepts the peace plan (see S/1998/1160 of 11 December 1998), which means that the only obstacle preventing the Saharawi people from fully enjoying its right to self-determination, in accordance with international law, comes from the Kingdom of Morocco, which persists in blocking the efforts of the international community to arrive at a peaceful and lasting solution.

15. The signing organizations urgently appeal to the international community, in particular the European Union, to direct the necessary pressures towards the Kingdom of Morocco in order to contribute decisively to the fulfilment of the accords.